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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 701.

IN THE MATTER OF BUDDY LYNN WHITTINGTON

BRIEF OF AMICUS CURIAE, THE DEFENDER'S OFFICE, CLEVELAND LEGAL AID SOCIETY IN SUPPORT OF PETITIONER.

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The Defender's Office of the Cleveland Legal Aid Society, with the consent of counsel for the Petitioner and Respondent herein, files this brief as Amicus Curiae in support of the position of Petitioners to reverse the judgment of the Court of Appeals, Fifth Appellate District, Fairfield County, Ohio, 13 Ohio App. 2d 11. Information contained in this brief purports to indicate that the practices complained of in the Brief for the Petitioner are not confined to small rural counties, but, in fact, these injustices are multiplied and magnified in Cuyahoga County, the largest county in the State of Ohio.

I. Interest and Position of Amicus.

The Defender's Office is the criminal branch of the Cleveland Legal Aid Society. Since the opening of the office on March 1, 1960, its lawyers, in their capacity as defense attorneys for the indigent, have voluntarily represented hundreds of juveniles charged with delinquency. Its interest in Juvenile Court is to help guarantee to the juvenile who is charged with an offense that would be a felony if he were an adult his full share of justice and the protection of his constitutional rights.

The work of the Defender's Office in Juvenile Court has been voluntary, and no payment from the Court has been received at any time.

The Defender's Office supports the position of Petitioner that a juvenile charged with a crime that would be an adult felony is entitled to proof beyond a reasonable doubt that he committed the offense, to an impartial trier of fact, to a jury trial if he wishes, to the protection of the *Miranda* guarantees, to bail granted under reasonable and proper standards and conditions, and, if he must be incarcerated, to be incarcerated under just and humane conditions.

This brief will not cite or repeat the arguments and authorities contained in Petitioner's brief other than to express support and agreement therewith.

II. Data on Cuyahoga County Juvenile Court.*

In 1966, a total of 19,394 cases of all types were filed in the Juvenile Court. This figure was a 4.4% increase over 1965. Of these cases, 7,296 were delinquency cases, an increase of 12% over 1965.

The charges most frequently brought against boys were:

Type of Complaint	Number of filings in 1966
unlawful entry and stealing	723
other thefts	710
injury to person	591
incorrigibility	573
auto theft	563
auto trespassing and tampering	527
destruction of property	347

* Data as reported herein, unless otherwise specifically noted, is from the Juvenile Court of Cuyahoga County, Cleveland, Ohio, Annual Report (1966).

As can easily be noted, all the above, except perhaps for some situations under the vague "incorrigibility" section, are potential felony charges for the juvenile, depending upon his age and the disposition of the Juvenile Court Judge to bind him over to the criminal court.

The charges most frequently brought against girls were:

Type of Complaint	Number of filings in 1966
incorrigibility	550
sex offenses	255
other stealing	203
injury to person	113

Of the 7,296 delinquency cases filed in 1966, only 665 were dismissed and 142 were marked "other disposition." In other words, 6,631 delinquency cases were processed to some kind of conclusion other than a dismissal.

Of those found to be delinquent in the Cuyahoga County Juvenile Court in 1966, 766 were committed or returned to a "public institution." These institutions were:

Institution	Number Committed
Ohio State Reformatory (a penal institution for adult felons under age 30 with no prior felony convictions)	40
Ohio Youth Commission	576
Cuyahoga County	150

An additional 16 boys were transferred to Common Pleas Court to face charges as an adult.

The preliminary draft of the 1967 Annual Report of the Juvenile Court of Cuyahoga County, Cleveland, Ohio, indicates that 53 juveniles were committed to the Ohio State Reformatory in 1967. This is 13 more than were committed there in 1966.

Another 2,646 adjudged delinquents were placed or continued under the supervision of Juvenile Court probation officers. According to the 1966 Annual Report statistics, 72% of all probation contacts occurred within the Court buildings. Forty-eight percent of these in-the-court-building contacts were by telephone. Only 28% of probation contacts occurred in the field.

A total of 4,212 juvenile delinquents were under care in the Detention Home during 1966. The average daily population of the Detention Home during the year was 171.

Although there is no mention in the Annual Report, some juveniles are also detained in the Cuyahoga County Jail while awaiting disposition of their cases in the Juvenile Court. A check of the Cuyahoga County Jail on February 19, 1968, showed that 12 juveniles were incarcerated there among a total jail population of about 560 inmates. Although the majority of the juveniles are on the Eighth Floor, the rest are scattered throughout the jail. The criterion for placement of a juvenile on a particular floor in the County Jail is the availability of room. Juveniles are placed on the Eighth Floor whenever possible, but when that floor is crowded, they are put on whatever floor can accommodate them. The other inmates on the Eighth Floor, like the rest of the jail, are federal and state prisoners awaiting trial or sentencing, or being held as probation or parole violators.

CONCLUSION.

The foregoing statistics emphasize the importance of ensuring that just and constitutional procedures are followed in the Juvenile Courts of Ohio. The volume of delinquency cases in this County, the number of commitments to penal-type institutions, especially to the Ohio State Reformatory, the detention in Cuyahoga County jail along with adult felons, the number of delinquents bound over for trial as adults, and the other practices pointed out in the foregoing statistics emphasize the arguments made in Petitioner's Brief that the judgment of the Court of Appeals, Fairfield County, Ohio, should be reversed.

Respectfully submitted,

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